

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 708 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SURESH RAMLAL NAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 708 of 1997
MR UTPAL M PANCHAL for Appellant
MR SUDHANSU S.PATEL, APP for Respondent.
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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against judgment dated June 9, 1997 rendered by the learned Additional Sessions Judge, Surat Camp at Vyara, in Sessions Case No.185 of 1992, by which the appellant is convicted of the offence punishable under Section 302 of the Indian

Penal Code and sentenced to suffer R.I. for life and fine of Rs. 1000/-, in default, S.I. for two months.

2. Sohanlal Navlaji, who is original complainant, was, at the relevant time, residing at Bardoli with his wife, a son and three daughters. He is native of Rajasthan. He was running a hand-lorry and was selling "Bhajiya" (a fried article of food made of gram flour) near College situated in Bardoli town and was maintaining his family. The appellant is brother-in-law of younger brother of Sohanlal. Earlier, the appellant was serving with the complainant and was operating a lorry owned by the complainant. However, after sometime he had separated from the complainant and was selling ice in a lorry. Two friends of the complainant i.e. Rameshbhai and Shambhubhai informed the complainant on June 1, 1992 at about 8.00 P.M. that the appellant was addressing the wife of the complainant as a witch. The complainant and his wife Laxmiben were, therefore, agitated and decided to verify this fact. It was known to him as well as to his wife and his friends that the appellant was daily passing with his lorry on the road at about 8.00 P.M. The complainant, therefore, asked Shambhubhai and Rameshbhai to maintain a vigil on road and inform him as soon as the appellant was found passing on the road with his lorry. At about 8.30 P.M. the appellant was spotted by Rameshbhai and Shambhubhai on the road. They, therefore, informed the complainant that the appellant was passing on road with his lorry. Thereupon, the complainant accompanied by his wife, Rameshbhai, Shambhubhai and his minor son etc. went on the road and stopped the appellant. The wife of the complainant tried to know from the appellant as to why she was being addressed as a witch by him. However, the appellant denied the said allegation and maintained that she was not addressed as a witch by him. Unfortunately, the complainant preferred to believe Shambhubhai, as a result of which, the complainant and his wife, who were highly agitated, started quarrelling with the appellant loudly. The complainant and those who accompanied him also abused the appellant. The wife of the complainant was more agitated and annoyed with the appellant than the complainant because she was of the opinion that she was addressed as a witch by the appellant. An attempt was made by the appellant to proceed to his destination. However, the complainant and others prevented him from proceeding towards his destination and an attempt was made to drag him to the house of the complainant because it was decided to have explanation of the appellant at the house of the complainant. Under the circumstances, the appellant picked up the poker lying in his lorry which is normally used for breaking ice and inflicted three injuries on wife of the

complainant and also injured complainant and Rameshbhai Pratapbhai who had intervened to save the wife of the complainant. On receipt of injuries, wife of the complainant fell down on the ground. She was removed to Gandhi Hospital for treatment. However, the complainant was advised to remove his wife to Sardar Hospital and, therefore, he removed his wife to Sardar Hospital. On examination, the Doctor on duty declared that the deceased was brought dead. Thereupon, Sohanlal lodged complaint, which was registered and investigated by Mr.Somanvadansinh Thakor, who was then P.S.I. of Bardoli Police Station. The investigating officer held inquest on the dead body of the deceased and made arrangement for sending dead body of the deceased to Community Health Centre, Bardoli for postmortem examination. Panchnama of place of incident was also drawn by the investigating officer in presence of panch witnesses and clothes of the deceased were seized after postmortem examination. The investigating officer also got map of the place of incident prepared. The appellant was absconding and was apprehended from Ahmedabad by P.S.I. Mr.Chudasma of Karanj Police Station, Ahmedabad City. While in custody, the appellant made disclosure statement pursuant to which poker used in commission of crime was discovered. On conclusion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate, First Class, Bardoli of the offences punishable under Sections 302, 324 & 504 of the Indian Penal Code. As the offence punishable under Section 302 I.P.C. is exclusively triable by a Court of Sessions, the case against the appellant was committed to Sessions Court, Surat for trial, where it was numbered as Sessions Case No.185 of 1982.

3. The learned Additional Sessions Judge, Surat Camp at Vyara, to whom the case was made over for trial, framed charge against the appellant at Exh.3 of the offences punishable under Sections 302, 324 & 504 of the Indian Penal Code. The charge was read over and explained to the appellant who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined, (1) Sohanlal Navlaji as PW.1 at Exh.8, (2) Shambhubhai Chhitarji Gujar as PW.2 at Exh.11, (3) Rameshbhai Pratapbhai as PW.3 at Exh.16, (4) Ashokbhai Sohanlal as PW.4 at Exh.17, (5) Dr.Ramiben Kachhiyabhai Chaudhary as PW.5 at Exh.18, (6) Dr.Harendrakumar Ravjibhai as PW.6 at Exh.21, (7) Gangaram Naththubhai Patil as PW.7 at Exh.23, (8) Ajay Sureshchandra Adhvaryu as PW.8 at Exh.25, (9) Ilmuddin Kudbuddin Saiyad as PW.9 at Exh.27, and (10) Jagdishsinh Temubha Chudasma as PW.10 at Exh.29, to prove its case against the appellant. The prosecution also produced documentary evidence such as First Information

Report lodged by Sohanlal at Exh.9, inquest panchnama at Exh.12, panchnama of place of incident at Exh.13, panchnama indicating seizure of clothes of the deceased at Exh.14, map of place of incident at Exh.15, postmortem notes of the deceased at Exh.19, certificate of injury of witness Rameshbhai Pratapbhai at Exh.20, certificate of injury of Sonbhai (complainant) at Exh.22, certificate indicating death of P.S.I. Thakor Somanvadansinh at Exh.24, panchnama indicating discovery of poker at the instance of the appellant at Exh.26, arrest panchnama of the appellant at Exh.28 etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant admitted that on the day of incident at about 8.00 P.M. the complainant and the deceased had approached him while he was passing on road with his ice lorry. However, he denied that he had addressed the deceased as a witch. The appellant sought permission of the Court to produce written statement at the time when his statement under Section 313 of the Code was recorded. The written statement was filed by the appellant at Exh.31. In the written statement, case of the appellant was that after leaving service of complainant Sohanlal he had started his own business, as a result of which the complainant had enmity with him and a false case was made out that he had addressed the wife of the complainant as a witch. According to him, when he was passing on the road with lorry, he was stopped by the deceased, complainant Sohanlal, Rameshbhai and Shambhubhai, and was assaulted with a dhoka (washing club), poker etc. and was filthily abused. It was further claimed in the written statement that after beating him, an attempt was made to drag him forcibly towards house of the complainant and the complainant had also throttled him. What was maintained by the appellant in his written statement was that as a result of all these, a scuffle had taken place and in an attempt to save himself, injuries were caused to Laxmiben. It was also stated by him that thereafter he had run away to save his life.

5. On evaluation of evidence led by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that Laxmiben had died a homicidal death on June 1, 1992. According to the learned Judge, testimony of the complainant and three other eye witnesses examined by the prosecution was trustworthy

as well as cogent which established that the appellant had inflicted three blows on the deceased with intention to cause her death when an attempt was made by the complainant and the deceased to verify as to whether the appellant had addressed the deceased as a witch or not and had committed an offence punishable under Section 302 I.P.C. The learned Judge deduced that the prosecution could not prove charge under Sections 324 & 504 I.P.C. levelled against the appellant. In view of abovereferredto conclusions, the learned Judge has convicted the appellant of the offence punishable under Section 302 I.P.C. and imposed sentences referred to earlier by judgment dated June 9, 1997, giving rise to instant appeal.

6. Mr.U.M.Panchal, learned counsel of the appellant, contended that having regard to the manner in which the incident had taken place, the learned Judge of the trial Court was not justified in convicting the appellant under Section 302 I.P.C. According to the learned counsel of the appellant, homicidal death of the deceased was caused without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the appellant having taken undue advantage or acted in a cruel or unusual manner, and as Exception-4 to Section 300 I.P.C. is attracted to the facts of the case, the appellant would be liable to be convicted under Section 304 Part-II I.P.C. It was argued that the admissions made by the prosecution witnesses in their cross-examination establish beyond doubt that the complainant and others had stopped the appellant when he was passing on road without any cause and not only the appellant was abused after picking up quarrel, but they had made attempt to drag him to the house of the complainant in spite of the fact that the appellant had informed the complainant and others that he had not addressed wife of the complainant as a witch and, therefore, the case should be held to be governed by the provisions of Section 304 Part-II I.P.C. The learned counsel pointed out that by this time the appellant has undergone sentence of imprisonment of more than 8 years and, therefore, conviction of the appellant under Section 302 I.P.C. should be converted into one punishable under Section 304 Part-II I.P.C. and sentence already undergone by him, by this time, should be imposed on him for commission of the said offence. The learned counsel emphasised that the learned Judge of the trial Court has not appreciated the evidence on record in its true perspective and, therefore, the appeal should be allowed.

7. Mr.Sudhansu S.Patel, learned A.P.P., contended that testimony of the complainant as well as that of three other eye witnesses establishes that the appellant had inflicted

serious injuries on the deceased which had resulted into her instantaneous death and, therefore, the learned Judge of the trial Court was justified in convicting the appellant under Section 302 I.P.C. According to the learned counsel of the State Government, there was no reason for the appellant to be agitated when an inquiry was made by the complainant and his wife alongwith others as to whether the deceased was addressed as a witch or not and, therefore, inflicting of blows with poker on the deceased should be regarded as intentional and with premeditation. The learned A.P.P. further pointed out that testimony of Dr. Chaudhary examined at Exh.18 establishes that injuries sustained by the deceased were sufficient in the ordinary course of nature to cause her death and as provisions of Clause Thirdly of Section 300 I.P.C. are attracted to the facts of the case, the plea that the appellant is liable to be convicted under Section 304 Part-II I.P.C. should not be accepted by the Court. The learned Counsel asserted that the evidence on record is evaluated in its true perspective and the appeal, which lacks merits, should be dismissed.

8. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. The fact that the deceased died a homicidal death is hardly in dispute. It is nobody's case that the deceased received injuries in an accident or the injuries found on her person were self-inflicted injuries. The testimony of Sohanlal, who is husband of the deceased as well as that of Shambhubhai Chhitarji Gujjar and Rameshbhai Pratapbhai would show that the deceased had sustained injuries by means of a poker used for breaking ice. The autopsy on the dead body of the deceased was performed by Dr. Ramiben Chaudhary. Dr. Chaudhary has narrated in her substantive evidence external as well as internal injuries sustained by the deceased which were noticed by her while performing autopsy on her body. Those injuries are also mentioned in postmortem notes produced on the record of the case at Exh.19. The injuries sustained by the deceased are also mentioned in detail in inquest panchnama produced by the prosecution at Exh.12. As per the medical record, cause of death of the deceased was shock due to internal and external haemorrhage which had taken place because of stab injury on heart and lung as well as major vessel. The finding recorded by the learned Judge of the trial Court that it was proved by the prosecution beyond reasonable doubt that the deceased died a homicidal death is eminently just and is hereby upheld.

9. The fact that the appellant had caused injuries to the deceased is not seriously disputed before this Court. This fact stands fully established by reliable and cogent testimony of (i) Sohanlal Navlaji examined at Exh.8, whose evidence gets complete corroboration from his complaint produced on record at Exh.9, (ii) Shambhubhai Chhitarji Gujjar examined at Exh.11, (iii) Rameshbhai Pratapbhai examined at Exh.16, and (iv) child witness Ashokbhai Sohanlal examined at Exh.17. The fact that the abovenamed witnesses were present at the time of incident is stated by the appellant in his written statement filed by him at Exh.31. The fact that the appellant had caused injuries to the deceased is also admitted by him in his written statement. Of course, the circumstances in which the injuries were caused have also been stated in the written statement. However, the fact that the appellant was author of injuries sustained by the deceased can hardly be disputed.

10. The short question which falls for consideration of the Court is whether on the facts and in the circumstances of the case, conviction of the appellant under Section 302 I.P.C. is justified. Complainant Sohanlal in his cross-examination admitted that as the appellant had addressed his wife as a witch, he himself and his wife were agitated and, therefore, it was decided to verify the said fact by asking the appellant. According to him, he had instructed witness Rameshbhai and witness Shambhubhai to keep a watch on the road and inform him as soon as the appellant was spotted passing on the road with his lorry. What is admitted by this witness is that on spotting the appellant on the road he was informed by Shambhubhai and Rameshbhai and, therefore, he in the company of his wife and Shambhubhai as well as Rameshbhai had gone on the road and stopped the appellant. It is also admitted by this witness that his wife had tried to know from the appellant as to why she was addressed as a witch, but the appellant had denied that he had addressed her as a witch. According to this witness, he had preferred to believe the say of Shambhubhai and a quarrel had taken place wherein they were shouting at the top of their voice. It was also admitted by him that they were raging with anger and had abused the appellant in filthy language. It was also admitted by him that an attempt was made by the appellant to proceed towards his destination with lorry, but he was prevented from doing so by him and others who had accompanied him. However, the suggestion made by the defence that he had attempted to throttle the appellant was denied by him. Again, witness Shambhubhai examined at Exh.11 has also admitted in his cross-examination that the appellant was stopped when he was passing on road with his lorry, as the

complainant and his wife had decided to verify from him as to whether he had in fact addressed wife of the complainant as a witch or not. Certain contradictions with reference to his earlier statement were brought on record. However, they are not relevant for the purpose on hand and, therefore, they are not referred to in detail. The testimony of Rameshbhai recorded at Exh.16 also shows that it was admitted by him that an attempt was made by the appellant to leave the place after he was spotted and stopped by him and others, but the appellant was not permitted to leave the place at all. It is also admitted by him that the appellant was explaining that he had not addressed the wife of the complainant as a witch, but what is stated by the witness is that it was decided to have explanation of the appellant at the house of the complainant and, therefore, an attempt was made to drag the appellant to the house of the complainant. It was also admitted by this witness that the appellant was refusing to come to the house of the appellant. What was admitted by the witness before the Court was that to him, complainant Sohanlal was as good as his employer and he was inclined to act as per dictates of complainant Sohanlal. According to this witness, when an attempt was made to know from the appellant as to whether he had addressed the wife of the complainant as a witch or not, at that time exchange of filthy abuses had taken place and that all had made attempt to take the appellant to the house of the complainant.

11. A fair reading of evidence of the abovenamed witnesses makes it clear that there was no animosity between the appellant and the deceased. In fact, the appellant had offered explanation stating that he had not addressed the deceased as a witch, but the deceased and her husband as well as those who had accompanied the complainant were not satisfied with the explanation of the appellant which was offered on road and had decided to have explanation of the appellant at the house of the complainant. The record further shows that, therefore, all had tried to drag the appellant forcibly to the house of the appellant, but before that the appellant had taken in his hand poker lying in his lorry and inflicted three blows on the person of the deceased. Having regard to the manner in which the incident had taken place, it is difficult to conclude that the appellant had caused homicidal death of the deceased with premeditation or caused injuries with an intention to cause her death. In fact, in a sudden fight, in the heat of passion upon a sudden quarrel and without the appellant having taken undue advantage or acted in a cruel or unusual manner, the appellant had inflicted three blows on the deceased. Having regard to the nature of evidence adduced by the prosecution, this Court has no

hesitation in recording a finding that the provisions of Exception-4 to Section 300 I.P.C. would be application to the facts of the case, notwithstanding the fact that it is stated by the Doctor, who performed autopsy on the dead body of the deceased, that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause her death. It is well settled that murder is an aggravated form of culpable homicide. The existence of any of the four conditions in the Section turns culpable homicide into murder, while the exceptions reduce the offence of murder again to one of culpable homicide not amounting to murder. After holding that the case falls within any of the four conditions set out in Section 300 I.P.C., a further attempt should be made by the Court to find out whether the case falls within one of the exceptions provided in Section 300 I.P.C. If upon the facts of the case and the evidence let in by the prosecution itself it appears that the accused is entitled to benefit of any of the exceptions, he cannot be deprived of it on the ground that he had not pleaded it or proved it. The accused can rely on any of the facts brought out in the case and may discharge the burden of proving the exception even when he has not pleaded or let in evidence thereon. On the facts and in the circumstances of the case, there is no manner of doubt that the provisions of Exception-4 to Section 300 I.P.C. are attracted to the facts of the case and, therefore, the appellant would be guilty of having committed an offence under Section 304 Part-II I.P.C., but not under Section 302 I.P.C. as held by the learned Judge of the trial Court.

12. As observed earlier, before the incident, the complainant and his colleagues had shouted at the appellant and quarrelled with him. Not only a quarrel had taken place between the complainant and the appellant, but a scuffle had also ensued, in which the appellant had picked up poker lying in his lorry and inflicted three injuries on the deceased. The testimony of the complainant and that of witness Rameshbhai establishes that the appellant was surrounded by four persons, and while attempting to free himself from the clutches of the complainant and his colleagues, who were dragging him to the house of the complainant, three injuries were caused to the deceased. Therefore, it is difficult to conclude that the intention of the appellant was to cause those bodily injuries to the deceased which were ultimately noticed when autopsy on her dead body was performed by Dr. Ramiben Chaudhary. However, there is no manner of doubt that the appellant had knowledge that bodily injuries, which he was likely to cause to the deceased, were such which were likely to cause death of the deceased. Having regard to the nature of

evidence adduced by eye witnesses and the Doctor who had performed autopsy on the dead body of the deceased, this Court is of the opinion that the appellant would be liable to be convicted under Section 304 Part-II I.P.C. Thus, conviction of the appellant under section 302 I.P.C. is liable to be converted into one punishable under Section 304 Part-II I.P.C.

13. This Court has heard the learned counsel of the parties regarding punishment to be imposed on the appellant for commission of offence punishable under Section 304 Part-II I.P.C. The information provided by the learned A.P.P. shows that by this time the appellant has undergone sentence of imprisonment of nine years, four months and five days. On the facts and in the circumstances of the case, this Court feels that interest of justice would be served if the appellant is sentenced to suffer imprisonment which he has already undergone by this time, for commission of offence punishable under Section 304 Part-II I.P.C.

For the foregoing reasons, the appeal is partly allowed. Judgment dated June 9, 1997 rendered by the learned Additional Sessions Judge, Surat Camp at Vyara, in Sessions Case No.185 of 1992 convicting the appellant under Section 302 I.P.C. and sentencing him to suffer R.I. for life and fine of Rs.1000/-, in default, S.I. for two months is hereby set aside. Instead, the appellant is convicted of the offence punishable under Section 304 Part-II I.P.C. For commission of offence punishable under Section 304 Part-II I.P.C., the appellant is sentenced to suffer R.I. for nine years and four months. As the appellant has undergone sentence imposed on him by this time for commission of offence punishable under Section 304 Part-II I.P.C., the respondent shall release the appellant forthwith, unless his presence is needed with reference to any other case. Muddamal be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.Panchal, J.)

(J.R.Vora, J.)

(patel)